Supreme Court, U.S.

97 • 194 JUL 29 1997

OFFICE OF THE CLERK

NO._____

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996

DOUGLAS NELSON CARLISLE,

Petitioner,

VS.

THE STATE OF TEXAS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE COURT OF CRIMINAL APPEALS OF TEXAS

PETITION FOR A WRIT OF CERTIORARI

Barbara C. Crampton *
Holly Crampton
CRAMPTON & CRAMPTON
505 Lamar Ave.
Wichita Falls, Texas 76301
(940) 723-9746 phone
(940) 322-5448 fax

* Counsel of Record

13 pp

QUESTION PRESENTED

I. WHETHER THE INVALID SEARCH WARRANT USED TO ENTER PETITIONER'S ABODE MADE EVIDENCE SEIZED AS A RESULT OF RELIANCE ON USE OF THE INVALID WARRANT INADMISSIBLE UNDER THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

PARTIES TO THE PROCEEDING

The parties to this proceeding are:

Petitioner, Douglas Nelson Carlisle

Respondent, The State of Texas

TABLE OF CONTENTS

QUESTIONS PRESENTED.....i

I. WHETHER THE INVALID SEARCH WARRANT USED TO ENTER PETITIONER'S ABODE MADE EVIDENCE SEIZED AS A RESULT OF RELIANCE ON USE OF THE INVALID WARRANT INADMISSIBLE UNDER THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

PARTIES TO THE PROCEEDING.....ii

TABLE OF CONTENTS.....iii-vi

TABLE OF AUTHORITIES.....viii

CASES.....viii

STATUTES.....viii

PETITION FOR CERTIORARI.....1

OPINIONS BELOW.....2

BASIS FOR JURISDICTION.....3

STATUTORY PROVISIONS INVOLVED.....4

STATEMENT OF THE CASE.....5

(1) STATEMENT OF FACTS.....5

(2) COURSE OF PROCEEDINGS AND DISPOSITION IN COURT BELOW.....8

REASONS FOR GRANTING THE WRIT.....9

I. **The present case involves interpretation of Fourth Amendment to the United States Constitution, relating to search and seizure.**

II. **This case involves the execution of an invalid search warrant at the time of the offense in question.**

The State argued that the exclusionary rule does not apply to evidence of illegal activity commenced after the police have made an unlawful entry into a house.

The Court of Appeals held that the State's argument presented a case of first impression in Texas and then held that "The record indicates that *after* Officer Robinett entered the living room and screamed at Carlisle to get on the floor, Carlisle raised the gun, cocked it, and pointed it at the officer. Under these circumstances, we find that the exclusionary rule would not require exclusion of the gun even if the warrant under which Officer Robinett entered the house was illegal."

III. The questions concerning the loss of a convicted felon's constitutional protections raised by the evidence in

this case should be examined more closely than has been done by the lower court's opinion.

IV. The questions of the lower court's refusal to apply the exclusion of evidence rule under the Fourth Amendment to the facts of this case, bears closer examination and analysis.

ARGUMENT AND AUTHORITIES.....12

CONCLUSION.....14

APPENDIX

A. JUDGMENT ON VERDICT OF GUILTY AFTER INDICTMENT - COUNT I

B. JUDGMENT ON VERDICT OF GUILTY AFTER INDICTMENT - COUNT II

C. DECISION OF COURT OF APPEALS

D. DECISION OF COURT OF APPEALS ON REHEARING

E. DECISION OF THE COURT OF CRIMINAL APPEALS OF TEXAS

F. SEARCH AND ARREST WARRANT

G. AFFIDAVIT IN SUPPORT OF SEARCH WARRANT

TABLE OF AUTHORITIES

CASES

FEDERAL CASES **PAGE**

United States vs. Leon,.....12
468 U.S. 897 at 923, 104 S.Ct. 3405,
82 L.Ed.2d 677

Michigan v. Summers,.....13
452 U.S. 692 at 705, 101 S.Ct. 2587,
69 L.Ed.2d at 351 (1981)

STATUTES

FEDERAL

Fourth Amendment to the United States Constitution...13

PETITION FOR A WRIT OF CERTIORARI

Petitioner herein respectfully prays that a writ of certiorari issue to review a final judgment of the Court of Criminal Appeals of Texas entered in this action on April 30, 1997.

OPINIONS BELOW

The decision of the district court is not reported.

The decision of the Court of Appeals is not reported.

The decision of the Court of Criminal Appeals of Texas is not reported.

All decisions are contained in the attached Appendix.

BASIS FOR JURISDICTION

The final judgment of the Court of Criminal Appeals of Texas was entered on April 30, 1997. This Court has jurisdiction to review the final judgment of the Court of Criminal Appeals of Texas pursuant to 28 U.S.C. Section 1254(1).

STATUTORY PROVISIONS INVOLVED

Fourth Amendment to the United States Constitution.

STATEMENT OF THE CASE

(i) STATEMENT OF FACTS.

For ease of identification the following will be used throughout this petition:

Petitioner will be called "Carlisle".

Respondent will be called "the State".

The facts in the light most favorable to the jury's verdict are:

On the evening of the 28th day of January, 1993, appellant was spending the night and baby-sitting Rebecca Sue Larson, the young daughter of Earl Travis Larson who was living with Patricia Sue Ingram, at their home located at 2142 Avenue E, Wichita Falls, Texas with the express consent and permission of the child's parents who had left the residence which they owned and occupied as their home to reconcile a marital difficulty. Shortly after midnight, on January 29, 1993, officers of the North Texas Drug Task Force executed companion

combination search and arrest warrants at 2142 Avenue E and 1409 Fulton (which was directly behind 2142 Avenue E and was also owned by Earl Travis Larson).

Upon arrival at 2142 Avenue E, the Task Force, which included Complainant, forced entry into the home by breaking down the front door with a battering ram while shouting "police" as one of them swung the ram against the door. Complainant was the first to enter the unlit residence with his thirty thousand candle power flashlight in his left hand and his drawn 16 shot 9 mm. Beretta semi-automatic pistol in his right hand where he encountered appellant seated on the couch in the living room with a blanket over his legs and his hands in his lap. Complainant yelled "police" at appellant and twice ordered him to "get down on the floor". When appellant brought up State's Exhibit No. 4 with two hands to shoulder level while cocking the hammer, Complainant shot appellant four times critically wounding him. State's

Exhibit No. 4 was seized from the residence and taken to the police department property room until brought to trial. The evidence at trial showed that Carlisle was not wearing his glasses and was legally blind without his glasses.

The search warrants in question, together with their respective supporting affidavits, were prepared by another Task Force member, Officer Burt. Complainant never saw the search warrants on the night in question and testified that he was a peace officer in the lawful discharge of his duty when he executed the warrant at 2142 Avenue E.

The search warrant and supporting affidavit is contained in Appendixes F and G attached to this Petition for a Writ of Certiorari.

(ii) COURSE OF PROCEEDINGS AND DISPOSITION IN COURT BELOW.

Carlisle was convicted of the first degree felony offense of aggravated assault on a peace officer with a deadly weapon, a firearm, and a fifty (50) year sentence was assessed him as an habitual offender; and the third degree felony offense of unlawful possession of a firearm to-wit: a handgun, by a felon, and a concurrent twenty (20) year sentence was assessed.

The Court of Appeals withdrew its original opinion entered on October 10, 1996 upon the State's motion for rehearing and entered its opinion after overruling Carlisle's Motion for rehearing.

The Court of Criminal Appeals refused Carlisle's Petition for Discretionary Review on April 30, 1997.

REASONS FOR GRANTING THE WRIT

I. The present case involves interpretation of Fourth Amendment to the United States Constitution, relating to search and seizure.

II. This case involves the execution of an invalid search warrant at the time of the offense in question.

The State argued that the exclusionary rule does not apply to evidence of illegal activity commenced after the police have made an unlawful entry into a house. The Court of Appeals held that the State's argument presented a case of first impression in Texas and then held that "The record indicates that *after* Officer Robinett entered the living room and screamed at Carlisle to get on the

floor, Carlisle raised the gun, cocked it, and pointed it at the officer. Under these circumstances, we find that the exclusionary rule would not require exclusion of the gun even if the warrant under which Officer Robinett entered the house was illegal."

III. The questions concerning the loss of a convicted felon's constitutional protections raised by the evidence in this case should be examined more closely than has been done by the lower court's opinion.

IV. The questions of the lower court's refusal to apply the exclusion of evidence rule under the Fourth

Amendment to the facts of this case,

bears closer examination and analysis.

ARGUMENT AND AUTHORITIES

Carlisle contends that the State made an illegal, no-knock entry (i.e., without first knocking and identifying himself stating his purpose for demanding entry and allowing the occupants time to open the door) before the State forcibly entered the residence under the auspices of an insufficient bare bones affidavit so lacking in *indicia* of probable cause as to render an official's good faith belief in its existence entirely unreasonable so that the officer entering the residence where Carlisle was could not manifest objective good faith reliance on the warrant issued on the basis. *United States v. Leon*, 468 U.S. 897 at 923, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984).

The combination search and arrest warrant and the supporting affidavit in this case does not contain any reference to Carlisle or any information which would constitute probable cause that he possessed marijuana. Furthermore, the affidavit does not allege that Carlisle

was in charge of and controlled the residence in question. Rather, the affidavit recited that the premises were in charge of and controlled by "A male suspect known to affiant only as Travis." The warrant only authorized the officers to arrest and bring before the magistrate each suspected party named in the affidavit.

The warrant to search for contraband was not founded on probable cause. Thus, for Fourth Amendment purposes the warrant did not implicitly carry with it the limited authority to detain Carlisle as an occupant of the premises while a proper search was conducted. *Michigan v. Summers*, 452 U.S. 692 at 705, 101 S.Ct. 2587, 69 L.Ed.2d at 351 (1981). The lower court has refused to apply the Fourth Amendment exclusionary rule to the facts of this case and has in effect carved out an "exception" to the exclusionary rule not previously sanctioned by this Court.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

Barbara C. Crampton *
Holly Crampton
CRAMPTON & CRAMPTON
505 Lamar Avenue
Wichita Falls, Texas 76301
TELEPHONE: (940) 723-9746
FAX PHONE: (940) 322-5448
* Counsel of Record

NO. 30,371-B
COUNT I

THE STATE OF TEXAS — IN THE 78TH DISTRICT COURT

V. — OF

DOUGLAS NELSON CARLISLE — WICHITA COUNTY, TEXAS

JUDGMENT ON JURY VERDICT OF GUILTY AFTER INDICTMENT
PUNISHMENT FIXED BY COURT OR JURY - NO PROBATION GRANTED

Date of Judgment : May 4, 1995
Presiding Judge : Calvin Ashley
Defendant : Douglas Nelson Carlisle
Attorney for Defendant: Holly Crampton
Attorney for State
Criminal District Attorney: Barry L. Macha
Assistant Criminal District Attorney: Ed Lane
Offense Convicted of: Unlawful Possession of Firearm
Degree: Felon Date Offense Committed: January 29, 1993
Charging Instrument : Indictment Arraignment: May 1, 1995 Plea : Not Guilty
Jury Verdict : Guilty Foreman : John Milton Ward
Plea to Enhancement Paragraph(s) : Not true Findings on Enhancement: True
Findings on Use of a Deadly Weapon: Affirmative

Punishment
Assessed by : Judge
Date
Sentence Imposed : May 5, 1995
Punishment and Twenty (20) years Restitution
Place of Confinement: TDCJ-I.D. Reparations:
Costs: $470.83
Date
to Commence: May 5, 1995 Time Credited : 817 days
Concurrent Unless
Otherwise Specified:

On this day, as set forth above, this case was called for trial and the State of Texas appeared by and through the above named attorney, and the Defendant appeared in person in open court and by the above named attorney for the Defendant, or, where a Defendant is not represented by counsel, that the Defendant knowingly, intelligently and voluntarily waived the right to representation by counsel, and the said Defendant having been duly arraigned and it appearing to the Court that the Defendant was mentally competent, and having pleaded as shown above to the indictment herein, both parties announced ready for trial and thereupon a jury, to wit, the above named foreman and eleven others, was charged by the Court, retired in charge of the proper officer to consider the verdict, and afterward were brought into Court by the proper officer, the Defendant and Defendant's counsel being present, and returned into open court the verdict set forth above, which was received by the Court and is here now entered upon the minutes of the Court as shown above.

Thereupon, the Defendant elected to have punishment assessed by the above shown assessor of

punishment, and when shown above that the indictment contains enhancement paragraph(s), which were not waived, and alleges the Defendant to have been convicted previously of any felony or offenses for the purpose of enhancement of punishment, then the Court asked the Defendant is such allegations were true or false and the Defendant answered as shown above. And when the Defendant is shown above to have elected to have the jury assess punishment, such jury was called back into the box and heard evidence relative to the question of punishment and having been duly charged by the Court, they retired to consider such question, and after having deliberated, they returned into Court the verdict shown under punishment above; and when the Defendant is shown above to have elected to have punishment fixed by the Court, in due form of law further evidence was heard by the Court relative to the question of punishment of the Defendant as shown above.

IT IS THEREFORE CONSIDERED AND ORDERED by the Court, in the presence of the Defendant, that the said judgment be, and the same is hereby in all things approved and confirmed, and that the Defendant is adjudged guilty of the offense set forth above as found by the verdict of the jury, as set forth above, and said Defendant be punished in accordance with the jury verdict or the Court's finding, as shown above and that the Defendant is sentenced to a term of imprisonment or fine or both, as set forth above, and that said Defendant be delivered by the Sheriff to the Director of the Department of Corrections of the State of Texas, or other person legally authorized to receive such convicts for the punishment assessed herein, and the said Defendant shall be confined for the above named term in accordance with the provisions of law

governing such punishments and execution may issue as necessary.

And, if shown above that the Defendant has been duly and legally convicted of a prior offense by showing the Court, cause number and offense, together with the punishment for such offense and date the Defendant was sentenced for such offense in accordance with such conviction, then it is further ORDERED AND ADJUDGED that the punishment herein adjudged against the said Defendant shall begin when the judgment in such prior offense, when shown above, shall have ceased to operate.

And the said Defendant is remanded to jail until said Sheriff can obey the directions of this judgment.

Defendant's Fingerprint

_____
PRESIDING JUDGE

Notice of Appeal:_____
Appeal Withdrawn:____
Mandate Received:____

May 5, 1995
DATE SIGNED

NO. 30,371-B
COUNT II

THE STATE OF TEXAS

V.

DOUGLAS NELSON CARLISLE

IN THE 78TH DISTRICT COURT

OF

WICHITA COUNTY, TEXAS

JUDGMENT ON JURY VERDICT OF GUILTY AFTER INDICTMENT
PUNISHMENT FIXED BY COURT OR JURY - NO PROBATION GRANTED

Date of Judgment : May 4, 1995
Presiding Judge : Calvin Ashley
Defendant : Douglas Nelson Carlisle
Attorney for Defendant: Holly Crampton
Attorney for State
Criminal District Attorney: Barry L. Macha
Assistant Criminal District Attorney: Ed Lane
Offense Convicted of: Aggravated Assault of a Peace Officer Degree: F/1 Date Offense Committed: January 29, 1993

Charging Instrument : Indictment Arraignment: May 1, 1995 Plea : Not Guilty
Jury Verdict : Guilty Foreman : John Milton Ward

Plea to Enhancement Paragraph(s) : Not true Findings on Enhancement: True
Findings on Use

of a Deadly Weapon: Affirmative
Punishment
Assessed by : Judge
Date
Sentence Imposed : May 5, 1995
Punishment and Fifty (50) years Restitution
Place of Confinement: TDCJ-I.D. Reparations:
Costs:
Date
to Commence: May 5, 1995 Time Credited : 817 days
Concurrent Unless
Otherwise Specified:

On this day, as set forth above, this case was called for trial and the State of Texas appeared by and through the above named attorney, and the Defendant appeared in person in open court and by the above named attorney for the Defendant, or, where a Defendant is not represented by counsel, that the Defendant knowingly, intelligently and voluntarily waived the right to representation by counsel, and the said Defendant having been duly arraigned and it appearing to the Court that the Defendant was mentally competent, and having pleaded as shown above to the indictment herein, both parties announced ready for trial and thereupon a jury, to wit, the above named foreman and eleven others, was charged by the Court, retired in charge of the proper officer to consider the verdict, and afterward were brought into Court by the proper officer, the Defendant and Defendant's counsel being present, and returned into open court the verdict set forth above, which was received by the Court and is here now entered upon the minutes of the Court as shown above.

Thereupon, the Defendant elected to have punishment assessed by the above shown assessor of punishment, and when shown above that the indictment contains enhancement paragraph(s), which were not waived, and alleges the Defendant to have been convicted previously of any felony or offenses for the purpose of enhancement of punishment, then the Court asked the Defendant is such allegations were true or false and the Defendant answered as shown above. And when the Defendant is shown above to have elected to have the jury assess punishment, such jury was called back into the box and heard evidence relative to the question of punishment and having been duly charged by the Court, they retired to consider such question, and after having deliberated, they returned into Court the verdict shown under punishment above; and when the Defendant is shown above to have elected to have punishment fixed by the Court, in due form of law further evidence was heard by the Court relative to the question of punishment of the Defendant as shown above.

IT IS THEREFORE CONSIDERED AND ORDERED by the Court, in the presence of the Defendant, that the said judgment be, and the same is hereby in all things approved and confirmed, and that the Defendant is adjudged guilty of the offense set forth above as found by the verdict of the jury, as set forth above, and said Defendant be punished in accordance with the jury verdict or the Court's finding, as shown above and that the Defendant is sentenced to a term of imprisonment or fine or both, as set forth above, and that said Defendant be delivered by the Sheriff to the Director of the Department of Corrections of the State of Texas, or other person legally authorized to receive such convicts for the punishment assessed herein, and

the said Defendant shall be confined for the above named term in accordance with the provisions of law governing such punishments and execution may issue as necessary.

And, if shown above that the Defendant has been duly and legally convicted of a prior offense by showing the Court, cause number and offense, together with the punishment for such offense and date the Defendant was sentenced for such offense in accordance with such conviction, then it is further ORDERED AND ADJUDGED that the punishment herein adjudged against the said Defendant shall begin when the judgment in such prior offense, when shown above, shall have ceased to operate.

And the said Defendant is remanded to jail until said Sheriff can obey the directions of this judgment.

Defendant's Fingerprint

_____
PRESIDING JUDGE

Notice of Appeal:_____
Appeal Withdrawn:_____
Mandate Received:_____

May 5, 1995
DATE SIGNED

COURT OFAPPEALS
SECOND DISTRICT OF TEXAS
FORTWORTH

NO. 2-95-211-CR

DOUGLAS NELSON CARLISLE
APPELLANT

VS.

THE STATE OF TEXAS
APPELLEE

FROM THE 78TH DISTRICT COURT OF WICHITA COUNTY

OPINION

A jury convicted Appellant Douglas Carlisle of unlawful possession of a firearm by a felon and aggravated assault of a police officer and assessed punishment at twenty years and fifty years respectively.

We affirm.

FACTS

On January 28, 1993, Carlisle was babysitting a friend's daughter at the friend's home in Wichita Falls, Shortly after midnight, officers with the North Texas Drug Task Force and the Wichita Falls narcotics division executed search and arrest warrants at the home where Carlisle was babysitting. The team forced entry into the home using a battering ram on the front door. Carrying a flashlight and his service revolver, Officer Larry Robinett entered the living room and saw Carlisle sitting on a couch. Officer Robinett yelled "Police" and screamed at Carlisle to get on the floor. When Carlisle did not obey Officer Robinett repeated the command. Officer Robinett testified that Carlisle ignored his instructions, raised a gun, cocked it, and pointed it at him. Afraid Carlisle was about to shoot

him, Officer Robinett shot and wounded Carlisle.

I. SUFFICIENCY OF THE EVIDENCE

On appeal, Carlisle brings six points of error contesting the legal and factual sufficiency of the evidence. In reviewing the legal sufficiency of the evidence to support a conviction, we view the evidence in the light most favorable to the verdict. *Narvaiz v. State*, 840 S.W.2d 415, 423 (Tex. Crim. App. 1992), *cert. denied*, 507 U.S. 975 (1993). The critical inquiry is whether, after so viewing the evidence, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Emery v. State*, 881 S.W.2d 702, 705 (Tex. Crim. App. 1994), *cert. denied*, 115 S.Ct. 1257 (1995). This standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *Jackson v. Virginia*, 443

U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560, 573 (1979).

The legal sufficiency of the evidence is a question of law. The issue on appeal is not whether we as a court believe the State's evidence or believe that the defense's evidence outweighs the State's evidence. *See Matson v. State*, 819 S.W.2d 839, 846 (Tex. Crim. App. 1991); *Wicker v. State*, 667 S.W.2d 137, 143 (Tex. Crim. App.), *cert. denied*, 469 U.S. 892 (1984). The verdict may not be overturned unless it is irrational or unsupported by proof beyond a reasonable doubt. *Matson*, 819 S.W.2d at 846.

A. Evidence That Carlisle Possessed a "Handgun"

The indictment charged Carlisle with possession of a "firearm, to wit: a handgun." *See* TEX. PENAL CODE ANN. § 46.04 (Vernon 1994) (convicted felon commits offense if he possesses firearm except at premises where he or she lives). A "handgun" is any

firearm that is designed, made, or adapted to be fired with one hand. *Id.* § 46.01(5); *see also id.* § 46.01(3) (definition of "firearm"). In point of error one, Carlisle argues there is no evidence that the object he pointed at Officer Robinett was a handgun. We disagree. State's Exhibit 4 was described as a "revolver" by a firearms expert and admitted into evidence. *See Livingston v. State*, 728 S.W.2d 144, 146 (Tex. App. – Fort Worth 1987, no pet.) (evidence sufficient to show felon unlawfully possessed firearm when jury had legal definitions of handgun and firearm and pistol admitted evidence). Also, a "revolver" is by definition a "handgun." *Id.* Point of error one is overruled.

Carlisle argues in point of error two that the evidence was factually insufficient to show that the weapon in question was a handgun because the "overwhelming weight of the evidence [proved] that it takes two hands to fire State's Exhibit No. 4." We

disagree. After carefully weighing all of the evidence adduced at trial regarding the object pointed at the officer, we do not find the jury's finding that it was a handgun so contrary to the overwhelming weight of the evidence to be clearly wrong and unjust. Therefore, in addition to holding the evidence legally sufficient to support the jury's finding that the weapon was a handgun, we find the evidence factually sufficient. *See Clewis v. State*, 922 S.W.2d 126 (Tex. Crim. App. 1996). Point of error two is overruled.

B. Evidence Regarding Carlisle's Defensive Theory

In point of error three, Carlisle argues that his conviction for aggravated assault of a police officer should be reversed because the evidence at trial established Carlisle "reasonably believed that force was immediately necessary to protect himself against the peace officers['] use or attempted use of greater force than necessary" and established that "[u]nder the

circumstances, [Carlisle] was justified in pointing" a handgun at the officer. We find that this point of error and point of error four, in which Carlisle argues that the overwhelming weight of the evidence supported his theory at trial, are both governed by the *Clewis* standard. And, after carefully weighing all of the evidence, including the evidence supporting the defensive theory advanced at trial, we do not find the verdict to be so contrary to the overwhelming weight of the evidence to be clearly wrong and unjust. Therefore, we find the evidence sufficient to support the jury's verdict that Carlisle was guilty of aggravated assault on the officer. *See id* at 129. Points of error three and four are overruled.

C. *Evidence that Officer Robinett Was Lawfully Discharging an Official Duty*

In point of error five, Carlisle argues there was no evidence to show Officer Robinett was lawfully

discharging an official duty. *See* TEX. PENAL CODE ANN. § 22.02(b)(2) (Vernon 1994) (person commits offense if he or she threatens with deadly weapon peace officer "acting in the lawful discharge of an official duty"). We disagree. The officer testified he was acting in the lawful discharge of his duty and described the procedure and events of that evening. This evidence alone was sufficient to support the jury's verdict. Point of error five is overruled. After considering all of the evidence on this issue, we are convinced the evidence is also factually sufficient to support the verdict. Point of error six alleging factually insufficient evidence that Officer Robinett was lawfully discharging an official duty is overruled.

II. ADMISSION OF THE GUN FOUND AT THE SCENE

In his seventh point of error, Carlisle complains that the trial court improperly admitted, "over timely and

proper objection," State's Exhibit 4, the handgun he allegedly pointed at Officer Robinett. Carlisle claims the gun was obtained in violation of his constitutional rights.

The record indicates that the following exchange took place when the State sought to have the gun admitted:

> [PROSECUTOR]: Your Honor, at this time we'll submit State's Exhibit 4 into evidence.
>
> ....
>
> [DEFENSE COUNSEL]: At this time we need to protect ourselves on – You haven't offered the gun before have you? This is the first offer?
>
> THE COURT: No. It's been identified by other witnesses.
>
> [DEFENSE COUNSEL]: I know, but it hasn't been offered yet at this point, because our position is that if the search, which is an element – Out position is that the search is an element. If the search is rules to not be good because of it being an element, that we don't want to waive our right to object to the gun being evidence and coming in here. So what we want this court to do is carry along our objection that

> we – that we would move that the gun not be produced as evidence if the search is held to not be good, which is something that is going to be decided – I just want to protect ourselves –
>
> THE COURT: Overruled. It's admitted. [Emphasis added.]

Although the record indicates that Carlisle's counsel filed a pre-trial motion in limine regarding the admission of extraneous offenses, there was no pre-trial motion to suppress filed. Further, Carlisle's counsel did not request, and the trial court did not give, a jury instruction regarding the legality of the search. *See* TEX. CODE CRIM. PROC. ANN. Art. 38.23(a) Vernon Supp. 1996). In sum, other than the objection noted *supra*, we can find no mention in the record of a defense contention that the search was illegal. We hold that this single objection was insufficient to preserve a constitutional claim regarding the validity of the search. TEX. R. App. P. 52(a). Rule 52(a) provides that "[i]n order to preserve a complaint for appellate

review, a party must have presented to the trial court a timely request, objection or motion, *stating the specifics grounds for the ruling he desired* the court to make ...." (emphasis added).[1] First the objection is only a conditional objection to the evidence. Carlisle's attorney objected that "if the search is ruled to not be good," that the gun would be inadmissible. But counsel never obtained a ruling on whether the search was valid. Secondly, the objection does not state *any* specific grounds upon which the court could refuse to admit the exhibit. Accordingly, Carlisle has not

---

[1] Rule 52 demands that a party present its evidence and all arguments in support thereof to allow the trial court the opportunity to make a ruling. Failing to present a particular argument to the trial court and then making such argument to the appellate court in effect usurps the trial court's function of ruling on such arguments. *Cruse v. State*, 882 S.W.2d 50, 52 (Tex. App. – Houston [14th Dist.] 1994, no pet.). Preservation of error is not merely a technical procedure by which appellate courts seek to overrule points of error in a cursory manner. The appellate court must allow the trial court a certain amount of latitude in its direction of trial matters excluding and admitting evidence or argument or else the appellate court would simply usurp the authority of the trial court, rendering the trial process an exercise in futility. *Id.*

presented the issue of the legality of the search for appeal.

Carlisle's argument also fails on the merits. Carlisle argues that Officer Robinett was executing an invalid search warrant, and therefore, the gun seized pursuant to that warrant was illegally seized and is inadmissible as fruit of the poisonous tree. The State relies on the argument that the exclusionary rule does not apply to evidence of illegal activity commenced *after* the police have made an unlawful entry into a house.[2] *See generally* 5 WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 11.4(j) (3d ed. 1996). Since there is no Texas decision addressing this issue, it presents an issue of first impression.

---

[2] By focusing on this issue alone, the State implicitly concedes that the search warrant was invalid. Because we find that the exclusionary rule does not apply to evidence of a crime initiated after an illegal entry into a residence by the police, we do not reach the issue of the validity of the search warrant.

In his brief, Carlisle fails to provide argument or authority as to how article I, section 9 of the Texas Constitution provides any different protection for him than the Fourth Amendment to the United States Constitution. Therefore, we will analyze his claim in light of applicable Fourth Amendment jurisprudence. *See Narvaiz*, 840 S.W.2d at 432; *Morehead v. State*, 807 S.W.2d 577, 579 n.1 (Tex. Crim. App. 1991).

The record indicates that *after* Officer Robinett entered the living room and screamed at Carlisle to get on the floor, Carlisle raised the gun, cocked it, and pointed it at the officer. Under these circumstances, we find that the exclusionary rule would not require exclusion of the gun even if the warrant under which Officer Robinett entered the house was illegal. The gun was not seized as an exploitation of the allegedly illegal entry, and the rationale of the exclusionary rule – deterring police misconduct – would not justify

exclusion on these facts. One court has noted that to allow exclusion in cases like this "would allow a defendant carte blanche authority to go on whatever criminal rampage he desired to do so with virtual legal impunity as long as such actions stemmed from the chain of causation started by the police misconduct, be it minor or major." *State v. Miskimins*, 435 N.W.2d 217, 221 (S.D. 1989); *accord State v. Miller*, 194 S.E.2d 353, 358 (N.C. 1973) (exclusion "would in effect give the victims of illegal searches a license to assault and murder the officers involved"); *see generally* 5 LAFAVE, SEARCH AND SEIZURE § 11.4(j). Point of error seven is overruled.

III. THE PROSECUTOR'S JURY ARGUMENT

In his eighth point of error, Carlisle complains that the trial court improperly allowed the prosecutor to argue that State witness Lannie G. Emanuel had testified that State's Exhibit 4 was a "handgun."

Emanuel had testified that State's Exhibit 4 was a "percussion revolver." As we noted *supra*, a "revolver" is by definition a "handgun." *See Livingston*, 728 S.W.2d at 146. Accordingly, the prosecutor's argument was not outside of the record. Carlisle's point of error eight is overruled.

IV. DOUBLE JEOPARDY

In his ninth point of error, Carlisle argues that unlawful possession of a firearm by a felon qualifies as a lesser included offense of aggravated assault on a peace officer with a deadly weapon. Therefore, Carlisle contends that his conviction on both counts violates the multiple punishment prong of the Fifth Amendment double jeopardy clause. *See Watson v. State*, 900 S.W.2d 60, 61 (Tex. Crim. App. 1995). The test established by the United States Supreme Court in *Blockburger v. United States*, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932), controls this issue. The test

is whether each offense requires proof of an element that the other offense does not. *See Watson*, 900 S.W.2d at 61.

The offense of possession of firearm by a felon has the following elements:

> (1) a person who has been convicted of a felony,
> (2) possesses a firearm,
> (3) at any location other than the premises at which the person lives.

TEX. PENAL CODE ANN. § 46.04 (Vernon 1994). The offense of assault has the following elements:

> (1) a person,
> (2) intentionally or knowingly,
> (3) threatens another with imminent bodily injury.

TEX. PENAL CODE ANN. § 22.01(a)(2) (Vernon 1994). The offense of aggravated assault on a peace officer has the following elements:

> (1) a person commits assault as defined in Section 22.01, and
> (2) uses or exhibits a deadly weapon,
> (3) against a public servant while the public servant is discharging a public duty.

TEX. PENAL CODE ANN. §§ 22.02(a)(2) (Vernon 1994).

Clearly, aggravated assault on a police officer does not require proof that the defendant is a convicted felon. Therefore, possession of a handgun by a felon is not a lesser included offense of aggravated assault on a police officer. Accordingly, the double jeopardy clause was not violated by the prosecution of Carlisle for both offenses. Carlisle's point of error nine is overruled.

Because we have found no error in the proceedings below, we affirm the trial court's judgment.

DAVID L. RICHARDS
JUSTICE

PANEL B: RICHARDS, BRIGHAM, and HOLMAN, JJ.

DO NOT PUBLISH
TEX. R. APP. P. 90(c)
OCT 10 1996

COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 2-95-211-CR

DOUGLAS NELSON CARLISLE APPELLANT

VS.

THE STATE OF TEXAS STATE

FROM THE 78TH DISTRICT COURT OF WICHITA COUNTY

OPINION ON REHEARING

This Court has considered the State's motion for rehearing and is of the opinion that the motion should be granted. Our prior opinion and judgment of October 10, 1996 are withdrawn and the following opinion is substituted in its place.

A jury convicted Appellant Douglas Nelson Carlisle of unlawful possession of a firearm by a felon and aggravated assault of a police officer and

assessed punishment at twenty years and fifty years respectively. We affirm.

FACTS

On January 28, 1993, Carlisle was babysitting a friend's daughter at the friend's home in Wichita Falls. Shortly after midnight, officers with the North Texas Drug Task Force and the Wichita Falls narcotics division executed search and arrest warrants at the home where Carlisle was babysitting. The team forced entry into the home using a battering ram on the front door. Carrying a flashlight and his service revolver, Officer Larry Robinett entered the living room and saw Carlisle sitting on a couch. Officer Robinett yelled "Police" and screamed at Carlisle to get on the floor. When Carlisle did not obey Officer Robinett repeated the command. Officer Robinett testified that Carlisle ignored his instructions, raised a gun, cocked it, and

pointed it at him. Afraid Carlisle was about to shoot him, Officer Robinett shot and wounded Carlisle.

I. SUFFICIENCY OF THE EVIDENCE

On appeal, Carlisle brings six points of error contesting the legal and factual sufficiency of the evidence. In reviewing the legal sufficiency of the evidence to support a conviction, we view the evidence in the light most favorable to the verdict. *Narvaiz v. State*, 840 S.W.2d 415, 423 (Tex. Crim. App. 1992), *cert. denied*, 507 U.S. 975 (1993). The critical inquiry is whether, after so viewing the evidence, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Emery v. State*, 881 S.W.2d 702, 705 (Tex. Crim. App. 1994), *cert. denied*, 115 S.Ct. 1257 (1995). This standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from

basic facts to ultimate facts. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560, 573 (1979).

The legal sufficiency of the evidence is a question of law. The issue on appeal is not whether we as a court believe the State's evidence or believe that the defense's evidence outweighs the State's evidence. *See Matson v. State*, 819 S.W.2d 839, 846 (Tex. Crim. App. 1991); *Wicker v. State*, 667 S.W.2d 137, 143 (Tex. Crim. App.), *cert. denied*, 469 U.S. 892 (1984). The verdict may not be overturned unless it is irrational or unsupported by proof beyond a reasonable doubt. *Matson*, 819 S.W.2d at 846.

A. Evidence That Carlisle Possessed a "Handgun"

The indictment charged Carlisle with possession of a "firearm, to wit: a handgun." *See* TEX. PENAL CODE ANN. § 46.04 (Vernon 1994) (convicted felon commits offense if he possesses firearm except at

premises where he or she lives). A "handgun" is any firearm that is designed, made or adapted to be fired with one hand. *Id.* § 46.01(5); *see also id.* § 46.01(3) (definition of "firearm"). In point of error one, Carlisle argues there is no evidence that the object he pointed at Officer Robinett was a handgun. We disagree. State's Exhibit 4 was described as a "revolver" by a firearms expert and admitted into evidence. See *Livingston v. State*, 728 S.W.2d 144, 146 (Tex. App. – Fort Worth 1987, no pet.) (evidence sufficient to show felon unlawfully possessed firearm when jury had legal definitions of handgun and firearm and pistol admitted into evidence). Also, a "revolver" is by definition a "handgun." *Id.* Point of error one is overruled.

Carlisle argues in point of error two that the evidence was factually insufficient to show that the weapon in question was a handgun because the "overwhelming weight of the evidence [proved] that it

takes two hands to fire State's Exhibit No. 4." We disagree. After carefully weighing all of the evidence adduced at trial regarding the object pointed at the officer, we do not find the jury's finding that it was a handgun so contrary to the overwhelming weight of the evidence to be clearly wrong and unjust. Therefore, in addition to holding the evidence legally sufficient to support the jury's finding that the weapon was a handgun, we find the evidence factually sufficient. *See Clewis v. State*, 922 S.W.2d 126 (Tex. Crim. App. 1996). Point of error two is overruled.

B. Evidence Regarding Carlisle's Defensive Theory

In point of error three, Carlisle argues that his conviction for aggravated assault of a police officer should be reversed because the evidence at trial established Carlisle "reasonably believed that force was immediately necessary to protect himself against the peace officers['] use or attempted use of greater

force than necessary" and established that "[u]nder the circumstances, [Carlisle] was justified in pointing" a handgun at the officer. We find that this point of error and point of error four, in which Carlisle argues that the overwhelming weight of the evidence supported his theory at trial, are both governed by the *Clewis* standard. And, after carefully weighing all of the evidence, including the evidence supporting the defensive theory advanced at trial, we do not find the verdict to be so contrary to the overwhelming weight of the evidence to be clearly wrong and unjust. Therefore, we find the evidence sufficient to support the jury's verdict that Carlisle was guilty of aggravated assault on the officer. *See id* at 129. Points of error three and four are overruled.

C. *Evidence that Officer Robinett Was Lawfully Discharging an Official Duty*

In point of error five, Carlisle argues there was no evidence to show Officer Robinett was lawfully discharging an official duty. *See* TEX. PENAL CODE ANN. § 22.02(b)(2) (Vernon 1994) (person commits offense if he or she threatens with deadly weapon peace officer "acting in the lawful discharge of an official duty"). We disagree. The officer testified he was acting in the lawful discharge of his duty and described the procedure and events of that evening. This evidence alone was sufficient to support the jury's verdict. Point of error five is overruled. After considering all of the evidence on this issue, we are convinced the evidence is also factually sufficient to support the verdict. Point of error six alleging factually insufficient evidence that Officer Robinett was lawfully discharging an official duty is overruled.

II. ADMISSION OF THE GUN FOUND AT THE SCENE

In his seventh point of error, Carlisle complains that the trial court improperly admitted, "over timely and proper objection," State's Exhibit 4, the handgun he allegedly pointed at Officer Robinett. Carlisle claims the gun was obtained in violation of his constitutional rights.

The record indicates that the following exchange took place when the State sought to have the gun admitted:

> [PROSECUTOR]: Your Honor, at this time we'll submit State's Exhibit 4 into evidence.
>
> ....
>
> [DEFENSE COUNSEL]: At this time we need to protect ourselves on – You haven't offered the gun before have you? This is the first offer?
>
> THE COURT: No. It's been identified by other witnesses.
>
> [DEFENSE COUNSEL]: I know, but it hasn't been offered yet at this point, because

> our position is that if the search, which is an element – Out position is that the search is an element. If the search is rules to not be good because of it being an element, that we don't want to waive our right to object to the gun being evidence and coming in here. So what we want this court to do is carry along our objection that we – that we would move that the gun not be produced as evidence if the search is held to not be good, which is something that is going to be decided – I just want to protect ourselves –
>
> THE COURT: Overruled. It's admitted. [Emphasis added.]

Although the record indicates that Carlisle's counsel filed a pre-trial motion in limine regarding the admission of extraneous offenses, there was no pre-trial motion to suppress filed. Further, Carlisle's counsel did not request, and the trial court did not give, a jury instruction regarding the legality of the search. *See* TEX. CODE CRIM. PROC. ANN. Art. 38.23(a) Vernon Supp. 1996). In sum, other than the objection noted *supra*, we can find no mention in the record of a defense contention that the search was illegal. We

hold that this single objection was insufficient to preserve a constitutional claim regarding the validity of the search. TEX. R. App. P. 52(a). Rule 52(a) provides that "[i]n order to preserve a complaint for appellate review, a party must have presented to the trial court a timely request, objection or motion, *stating the specifics grounds for the ruling he desired* the court to make ...." (emphasis added).[1] First the objection is only a condition objection to the evidence. Carlisle's attorney objected that "if the search is ruled to not be good," that the gun would be inadmissible. But counsel never obtained a ruling on whether the search was valid.

---

[1] Rule 52 demands that a party present its evidence and all arguments in support thereof to allow the trial court the opportunity to make a ruling. Failing to present a particular argument to the trial court and then making such argument to the appellate court in effect usurps the trial court's function of ruling on such arguments. *Cruse v. State*, 882 S.W.2d 50, 52 (Tex. App. – Houston [14th Dist.] 1994, no pet.). Preservation of error is not merely a technical procedure by which appellate courts seek to overrule points of error in a cursory manner. The appellate court must allow the trial court a certain amount of latitude in its direction of trial matters excluding and admitting evidence or argument or else the appellate court would simply usurp the

Secondly, the objection does not state *any* specific grounds upon which the court could refuse to admit the exhibit. Accordingly, Carlisle has not presented the issue of the legality of the search for appeal.

Carlisle's argument also fails on the merits. Carlisle argues that Officer Robinett was executing an invalid search warrant, and therefore, the gun seized pursuant to that warrant was illegally seized and is inadmissible as fruit of the poisonous tree. The State relies on the argument that the exclusionary rule does not apply to evidence of illegal activity commenced *after* the police have made an unlawful entry into a house.[2] *See generally* 5 WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 11.4(j) (3d ed. 1996). Since

---

authority of the trial court, rendering the trial process an exercise in futility. *Id.*

[2] By focusing on this issue alone, the State implicitly concedes that the search warrant was invalid. Because we find that the exclusionary rule does not apply to evidence of a crime initiated

there is no Texas decision addressing this issue, it presents an issue of first impression.

In his brief, Carlisle fails to provide argument or authority as to how article I, section 9 of the Texas Constitution provides any different protection for him than the Fourth Amendment to the United States Constitution. Therefore, we will analyze his claim in light of applicable Fourth Amendment jurisprudence. *See Narvaiz*, 840 S.W.2d at 432; *Morehead v. State*, 807 S.W.2d 577, 579 n.1 (Tex. Crim. App. 1991).

The record indicates that *after* Officer Robinett entered the living room and screamed at Carlisle to get on the floor, Carlisle raised the gun, cocked it, and pointed it at the officer. Under these circumstances, we find that the exclusionary rule would not require exclusion of the gun even if the warrant under which Officer Robinett entered the house was illegal. The

---

after an illegal entry into a residence by the police, we do not

gun was not seized as an exploitation of the allegedly illegal entry, and the rationale of the exclusionary rule – deterring police misconduct – would not justify exclusion on these facts. One court has noted that to allow exclusion in cases like this "would allow a defendant carte blanche authority to go on whatever criminal rampage he desired to do so with virtual legal impunity as long as such actions stemmed from the chain of causation started by the police misconduct, be it minor or major." *State v. Miskimins*, 435 N.W.2d 217, 221 (S.D. 1989); *accord State v. Miller*, 194 S.E.2d 353, 358 (N.C. 1973) (exclusion "would in effect give the victims of illegal searches a license to assault and murder the officers involved"); *see generally* 5 LAFAVE, SEARCH AND SEIZURE § 11.4(j). Point of error seven is overruled.

---

reach the issue of the validity of the search warrant.

III. THE PROSECUTOR'S JURY ARGUMENT

In his eighth point of error, Carlisle complains that the trial court improperly allowed the prosecutor to argue that State witness Lannie G. Emanuel had testified that State's Exhibit 4 was a "handgun." Emanuel had testified that State's Exhibit 4 was a "percussion revolver." As we noted *supra*, a "revolver" is by definition a "handgun." *See Livingston*, 728 S.W.2d at 146. Accordingly, the prosecutor's argument was not outside of the record. Carlisle's point of error eight is overruled.

IV. DOUBLE JEOPARDY

In his ninth point of error, Carlisle argues that unlawful possession of a firearm by a felon qualifies as a lesser included offense of aggravated assault on a peace officer with a deadly weapon. Therefore, Carlisle contends that his conviction on both counts violates the multiple punishment prong of the Fifth

Amendment double jeopardy clause. *See Watson v. State*, 900 S.W.2d 60, 61 (Tex. Crim. App. 1995). The test established by the United States Supreme Court in *Blockburger v. United States*, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932), controls this issue. The test is whether each offense requires proof of an element that the other offense does not. *See Watson*, 900 S.W.2d at 61.

The offense of possession of firearm by a felon has the following elements:

> (1) a person who has been convicted of a felony,
> (2) possesses a firearm,
> (3) at any location other than the premises at which the person lives.

TEX. PENAL CODE ANN. § 46.04 (Vernon 1994). The offense of assault has the following elements:

> (1) a person,
> (2) intentionally or knowingly,
> (3) threatens another with imminent bodily injury.

TEX. PENAL CODE ANN. § 22.01(a)(2) (Vernon 1994). The offense of aggravated assault on a peace officer has the following elements:

> (1) a person commits assault as defined in Section 22.01, and
> (2) uses or exhibits a deadly weapon,
> (3) against a public servant while the public servant is discharging a public duty.

TEX. PENAL CODE ANN. §§ 22.02(a)(2) (Vernon 1994).

Clearly, aggravated assault on a police officer does not require proof that the defendant is a convicted felon. Therefore, possession of a handgun by a felon is not a lesser included offense of aggravated assault on a police officer. Accordingly, the double jeopardy clause was not violated by the prosecution of Carlisle for both offenses. Carlisle's point of error nine is overruled.

Because we have found no error in the proceedings below, we affirm the trial court's judgment.

DAVID L. RICHARDS
JUSTICE

PANEL B: RICHARDS, BRIGHAM, and HOLMAN, JJ.

DO NOT PUBLISH
TEX. R. APP. P. 90(c)
NOV 14 1996

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITAL STATION, AUSTIN, TEXAS 78711

April 30, 1997
COA#: 02-95-00211-CR
RE: Case No. 0268-97
STYLE: CARLISLE, DOUGLAS NELSON

On this day, the Appellant's Petition for Discretionary Review has been REFUSED.

Troy C. Bennett, Jr., Clerk

HOLLY CRAMPTON
1300 KEMP BLVD
WICHITA FALLS TX 76309

SEARCH WARRANT

JP1-1003555

THE STATE OF TEXAS

COUNTY OF WICHITA

To The Sheriff Or Any Peace Officer Of Wichita County, Texas, or any Peace Officer of the State of Texas, GREETING:

WHEREAS, the Affiant whose name appears on the attached Affidavit is a Peace Officer under the laws of the State of Texas and did heretofore this day subscribe and swear to said Affidavit before me (which said Affidavit is here now made part hereof for all purposes), and whereas I find that the verified facts stated by Affiant in said Affidavit show that Affiant has probable cause for the belief expressed therein and establish existence of proper grounds for issuance of this warrant:

NOW, THEREFORE, you are commanded to enter the suspected place described in said Affidavit and to there search for the personal property described in said Affidavit and to seize same and to arrest and bring before me each suspected party named in said Affidavit.

Further, you are ORDERED, pursuant to provisions of Article 18.10, Texas Code of Criminal Procedure, to retain custody of any property seized pursuant to this Warrant, until further order of this Court or any other court of appropriate jurisdiction shall otherwise direct the manner of safekeeping of said property. This Court

grants you leave and authority to remove such seized property from this county, if and only if such removal is necessary for the safekeeping of such seized property by you, or if such
removal is otherwise authorized by the provisions of Article 18.10, T.C.C.P. You are furthered ORDERED to give notice to this Court, as a part of the inventory to be filed subsequent to the execution of this Warrant, and as required by Article 18.10, T.C.C.P., of the place where the property seized hereunder is kept, stored and held.

HEREIN FAIL NOT, but have you then and there this Warrant within three days, exclusive of the day of issuance and exclusive of the day of its execution with your return thereon, showing how you have executed the same, filed in this Court.

ISSUED AT 11:30 P.M., on this the 28 day of January, 1993, A.D., to certify which witness my hand this day.

Janice R. Sons
MAGISTRATE, Wichita County, Texas

AFFIDAVIT

STATE OF TEXAS

COUNTY OF WICHITA

The undersigned Affiant, being a Peace Officer under the laws of the State of Texas and being duly sworn, on oath makes the following statements and accusations:

1. There is in Wichita County, Texas, a suspected place described and located as follows:

   A tan single story frame house with brown trim at 2142 Avenue E. The house has the address on the front and the house is trimmed in brown. The house is on the north side of the street and faces south.

2. Said suspected place is in charge of and controlled by each of the following named parties (hereafter called "suspected party" whether one or more) to wit:

   A male suspect known to Affiant only as Travis.

3. It is the belief of Affiant, and Affiant hereby charges and accuses that said suspected party has possession of and is concealing at said suspected place in violation of the laws of the State of Texas the following described personal property, to wit:
   a controlled substance, to wit, marijuana.

4. AFFIANT HAS PROBABLE CAUSE FOR THE SAID BELIEF BY REASON OF THE FOLLOWING FACTS, TO WIT:
On 01-27-93 a confidential informant, who for reasons of security shall remain unnamed, went to 2142 Ave E to purchase marijuana. The informant
sent another person in to the house. The other person went in and gave the money supplied by the informant to a person known as Travis. Travis told the other person that he had to get the marijuana from "Three Fingered Marvin". Affiant knows "Three Fingered Marvin" to be Marvin Wayne Adams. Travis left 2142 Ave E and yelled out the back door to 1409 Fulton. This is directly behind 2142 Ave E. Both houses are painted the same color tan with brown trim. The informant saw Travis go to 1409 Fulton and then back to 2142 Ave E. As soon as Travis returned to 2142 Ave E, the person the informant sent in for the marijuana came back out and gave the marijuana to the informant. This person explained to the informant that Travis is in care and control of both 2142 Ave E and 1409 Fulton and that Travis allows Adams to live on Fulton in exchange for Adams holding most of the marijuana. Again on 01-28-93 Affiant sent the informant back to the same house.

Again, the informant gave money to the same other person to go in and buy marijuana. The other person went in and gave the money to Travis and the informant saw Travis go out the back door of 2142 Ave E and go into 1409

Fulton. The informant saw Travis leave after a short time and go back to 2142 Ave E. As soon as Travis returned the other person came back out and gave the marijuana to the informant. The other person said Travis always had marijuana and to come back any time. Affiant has received information in the past that this going on at this address. Officer Al Chapa has also received this information. Officer Bob Talley has received
information in the past that this was going on at this address. Affiant has observed traffic consistent with marijuana dealing at this address. Affiant personally knows Marvin Adams and is aware of Adams'
involvement in illegal drugs. Adams has been arrested for drug offenses in the past. The informant has proven to Affiant the ability to recognize marijuana and the way it is packaged and sold. The informant is responsible for several felony arrests including but not limited to marijuana offenses. The informant has made these buys and observations within the last twenty four (24) hours.
Affiant believes Travis is in possession of marijuana at 2142 Ave. E and believes he will find marijuana there.

WHEREFORE, Your Affiant asks for the issuance of a warrant that will authorize the search of said suspected place and for said personal property and seizure of the same and for the arrest of each said suspected party, and to take custody of all seized property and safekeep such property as provided by statute.

signed by Greg Burt
Affiant

Subscribed and sworn to before me by the said Affiant on this 28th day of January, 1993 A.D.

signed by Janice R. Sons
MAGISTRATE, Wichita County, Texas